

103D CONGRESS
1ST SESSION

S. 994

To authorize the establishment of a fresh cut flowers and fresh cut greens promotion and consumer information program for the benefit of the floricultural industry and other persons, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 20 (legislative day, APRIL 19), 1993

Mr. PRYOR (for himself, Mr. HEFLIN, Mr. COCHRAN, and Mr. McCONNELL) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To authorize the establishment of a fresh cut flowers and fresh cut greens promotion and consumer information program for the benefit of the floricultural industry and other persons, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Fresh Cut Flowers and Fresh Cut Greens Promotion and
6 Information Act of 1993”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and declaration of policy.
- Sec. 3. Definitions.
- Sec. 4. Issuance of orders.
- Sec. 5. Required terms in orders.
- Sec. 6. Exclusion; determinations.
- Sec. 7. Referenda.
- Sec. 8. Petition and review.
- Sec. 9. Enforcement.
- Sec. 10. Investigations and power to subpoena.
- Sec. 11. Confidentiality.
- Sec. 12. Authority for Secretary to suspend or terminate order.
- Sec. 13. Construction.
- Sec. 14. Regulations.
- Sec. 15. Authorization of appropriations.

1 **SEC. 2. FINDINGS AND DECLARATION OF POLICY.**

2 (a) FINDINGS.—Congress finds that—

3 (1) fresh cut flowers and fresh cut greens are
 4 an integral part of life in the United States, are
 5 consumed by millions of persons every year for a
 6 multitude of special purposes (especially important
 7 personal events), and contribute a natural and beau-
 8 tiful element to what is increasingly a man-made, ar-
 9 tificial environment;

10 (2) cut flowers and cut greens are produced by
 11 many producers throughout the United States as
 12 well as in other countries, and are handled and mar-
 13 keted by thousands of small-sized and medium-sized
 14 businesses;

15 (3) the production, handling, and marketing of
 16 cut flowers and cut greens constitute a key segment
 17 of the United States horticultural industry and thus

1 a significant part of the overall agricultural economy
2 of the United States;

3 (4) handlers play a vital role in the marketing
4 of cut flowers and cut greens in that handlers pur-
5 chase most of the cut flowers and cut greens mar-
6 keted by producers, prepare the cut flowers and cut
7 greens for retail consumption, serve as an
8 intermediary between the source of the product and
9 the retailer, otherwise facilitate the entry of cut
10 flowers and cut greens into the current of domestic
11 commerce, and add efficiencies to the market proc-
12 ess that ensure the availability of a much greater va-
13 riety of the product and substantial price savings to
14 retailers and consumers;

15 (5) it is widely recognized that it is in the pub-
16 lic interest and important to the agricultural econ-
17 omy of the United States to provide an adequate,
18 steady supply of cut flowers and cut greens at rea-
19 sonable prices to the consumers of the United
20 States;

21 (6) cut flowers and cut greens move in inter-
22 state and foreign commerce, and cut flowers and cut
23 greens that do not move in interstate or foreign
24 channels of commerce but only in intrastate com-

1 merce directly affect interstate commerce in these
2 products;

3 (7) the maintenance and expansion of markets
4 and the development of new or improved markets or
5 uses for cut flowers and cut greens are needed to
6 preserve and strengthen the economic viability of the
7 domestic cut flowers and cut greens industry for the
8 benefit of producers, handlers, retailers, and the en-
9 tire floral industry;

10 (8) generic programs of promotion and
11 consumer information can be effective in maintain-
12 ing and developing markets for cut flowers and cut
13 greens, and have the advantage of equally enhancing
14 the market position for all cut flowers and cut
15 greens;

16 (9) because cut flowers and cut greens produc-
17 ers are primarily agriculture-oriented rather than
18 promotion-oriented, and because the floral marketing
19 industry within the United States is comprised
20 mainly of small-sized and medium-sized businesses,
21 the development and implementation of an adequate
22 and coordinated national program of generic pro-
23 motion and consumer information necessary for the
24 maintenance of existing markets and the develop-

1 ment of new markets for cut flowers and cut greens
2 have been prevented;

3 (10) there exist established State and commod-
4 ity-specific producer-funded programs of promotion
5 and research that are valuable efforts to expand
6 markets for domestic producers of cut flowers and
7 cut greens and that will benefit from the promotion
8 and consumer information program authorized by
9 this Act by enhancing their market development ef-
10 forts for domestic producers;

11 (11) an effective and coordinated method for
12 ensuring cooperative and collective action in provid-
13 ing for and financing a nationwide program of ge-
14 neric promotion and consumer information is needed
15 to ensure that the cut flowers and cut greens indus-
16 try will be able to provide, obtain, and implement
17 programs of promotion and consumer information
18 necessary to maintain, expand, and develop markets
19 for these products; and

20 (12) the most efficient method of financing
21 such a nationwide program is to assess cut flowers
22 and cut greens at the point cut flowers and cut
23 greens are sold by handlers into the retail market.

24 (b) POLICY AND PURPOSE.—It is the purpose of this
25 Act to authorize the establishment, through the exercise

1 of the powers provided in this Act, of an orderly procedure
2 for the development and financing (through an adequate
3 assessment on cut flowers and cut greens sold by handlers
4 to retailers and related entities in the United States) of
5 an effective and coordinated program of generic pro-
6 motion, consumer information, and related research de-
7 signed to strengthen the position of cut flowers and cut
8 greens in the marketplace and to maintain, develop, and
9 expand markets for cut flowers and cut greens.

10 **SEC. 3. DEFINITIONS.**

11 As used in this Act:

12 (1) CONSUMER INFORMATION.—The term
13 “consumer information” means any action or pro-
14 gram that provides information to consumers and
15 other persons on appropriate uses under varied cir-
16 cumstances, and on the care and handling, of cut
17 flowers or cut greens.

18 (2) CUT FLOWERS AND CUT GREENS.—

19 (A) IN GENERAL.—

20 (i) CUT FLOWERS.—The term “cut
21 flowers” includes all flowers cut from
22 growing plants that are used as fresh-cut
23 flowers, produced either under cover or in
24 field operations.

1 (ii) CUT GREENS.—The term “cut
2 greens” includes all cultivated or
3 noncultivated decorative foliage cut from
4 growing plants that are used as fresh-cut
5 decorative foliage (except Christmas trees)
6 produced either under cover or in field op-
7 erations.

8 (iii) EXCLUSIONS.—The terms “cut
9 flowers” and “cut greens” do not include
10 a foliage plant, floral supply, or flowering
11 plant.

12 (B) SUBSTANTIAL PORTION.—In any case
13 in which a handler packages cut flowers or cut
14 greens with hard goods in an article (such as a
15 gift basket or similar presentation) for sale to
16 a retailer, the PromoFlor Council may deter-
17 mine, under procedures specified in the order,
18 that the cut flowers or cut greens in the article
19 do not constitute a substantial portion of the
20 value of the article and that, based on the de-
21 termination, the article shall not be treated as
22 an article of cut flowers or cut greens subject
23 to assessment under the order.

24 (3) GROSS SALES PRICE.—The term “gross
25 sales price” means the total amount of the trans-

1 action derived from the sale of cut flowers or cut
2 greens from a handler to a retailer.

3 (4) HANDLERS.—

4 (A) QUALIFIED HANDLER.—

5 (i) IN GENERAL.—The term “qualified
6 handler” means a person (including a co-
7 operative) operating in the cut flowers or
8 cut greens marketing system that sells do-
9 mestic or imported cut flowers or cut
10 greens to retailers and exempt handlers
11 and whose annual sales of cut flowers and
12 cut greens to retailers and exempt handlers
13 are \$750,000 or more.

14 (ii) INCLUSIONS AND EXCLUSIONS.—

15 The term “qualified handler” includes—

16 (I) a bouquet manufacturer (sub-
17 ject to paragraph (2)(B));

18 (II) an auction house that clears
19 the sale of cut flowers and cut greens
20 to retailers and exempt handlers
21 through a central clearinghouse; and

22 (III) a distribution center that is
23 owned or controlled by a retailer—

1 (aa) if the predominant re-
2 tail business activity of the re-
3 tailer is floral sales; or

4 (bb) when a majority of the
5 cut flowers and cut greens sales
6 or transfers from the center are
7 to entities other than entities
8 owned or controlled by the re-
9 tailer.

10 (iii) TRANSFERS.—For purposes of
11 determining sales of cut flowers and cut
12 greens to a retailer from a distribution
13 center under clause (ii)(III), each non-sale
14 transfer to a retailer shall be treated as a
15 sale in an amount calculated as provided in
16 subparagraph (C).

17 (iv) TRANSPORTATION OR DELIV-
18 ERY.—The term “qualified handler” does
19 not include a person who merely physically
20 transports or delivers cut flowers or cut
21 greens without more.

22 (v) CONSTRUCTION.—

23 (I) IN GENERAL.—The term
24 “qualified handler” includes an im-
25 porter or producer that sells cut flow-

1 ers or cut greens the importer or pro-
2 ducer has imported into the United
3 States or produced, respectively, and
4 sells the articles directly to consumers
5 and whose sales of the articles (as cal-
6 culated under subparagraph (C)), to-
7 gether with sales of cut flowers and
8 cut greens to retailers or exempt han-
9 dlers, annually are \$750,000 or more.

10 (II) SALES.—Each direct sale to
11 a consumer by a qualified handler de-
12 scribed in subclause (I) shall be treat-
13 ed as a sale to a retailer or exempt
14 handler in an amount calculated as
15 provided in subparagraph (C).

16 (III) DEFINITIONS.—For pur-
17 poses of this clause:

18 (aa) IMPORTER.—The term
19 “importer” has the same mean-
20 ing as that provided for the term
21 in section 5(b)(2)(B)(iii)(I).

22 (bb) PRODUCER.—The term
23 “producer” has the same mean-
24 ing as that provided for the term
25 in section 5(b)(2)(B)(ii)(I).

1 (B) EXEMPT HANDLER.—The term “ex-
2 empt handler” means a person that would oth-
3 erwise be considered to be a qualified handler,
4 except that the annual sales by the person of
5 cut flowers and cut greens to retailers and
6 other exempt handlers are less than \$750,000.

7 (C) ANNUAL SALES DETERMINED.—

8 (i) IN GENERAL.—Except as provided
9 in clause (ii), for purposes of determining
10 the amount of annual sales of cut flowers
11 and cut greens under subparagraphs (A)
12 and (B), the amount of a sale shall be de-
13 termined on the basis of the gross sales
14 price of a product sold.

15 (ii) TRANSFERS.—In the case of the
16 non-sale transfer of cut flowers or cut
17 greens from a distribution center (as de-
18 scribed in subparagraph (A)(ii)(III)) and a
19 direct sale to a consumer (as described in
20 subparagraph (A)(v)), the amount of the
21 sale shall be the price paid by the distribu-
22 tion center, or importer, respectively, to ac-
23 quire the cut flowers or cut greens plus—

24 (I) an amount determined by
25 multiplying the acquisition price by a

1 uniform percentage established by the
2 PromoFlor Council to represent the
3 mark-up of a wholesale handler on a
4 sale to a retailer; or

5 (II) in the case of a direct sale to
6 a consumer by a producer, an amount
7 determined by applying to the price
8 paid by the consumer a uniform per-
9 centage established by the PromoFlor
10 Council to represent the cost of pro-
11 ducing the article and the mark-up of
12 a wholesale handler on a sale to a re-
13 tailer.

14 (5) PERSON.—The term “person” means an in-
15 dividual, group of individuals, firm, partnership, cor-
16 poration, joint stock company, association, society,
17 cooperative, or other legal entity.

18 (6) PROMOFLOL COUNCIL.—The term
19 “PromoFlor Council” means the Fresh Cut Flowers
20 and Fresh Cut Greens Promotion Council estab-
21 lished under section 5(b).

22 (7) PROMOTION.—The term “promotion”
23 means any action determined by the Secretary to ad-
24 vance the image, desirability, or marketability of cut
25 flowers or cut greens, including paid advertising.

1 (8) RESEARCH.—The term “research” means
2 market research and studies limited to the support
3 of advertising, market development, and other pro-
4 motion efforts and consumer information efforts re-
5 lating to cut flowers or cut greens, including edu-
6 cational activities.

7 (9) RETAILER.—

8 (A) IN GENERAL.—The term “retailer”
9 means a person (such as a retail florist, super-
10 market, mass market retail outlet, or other end-
11 use seller, as described in an order issued under
12 this Act) that sells cut flowers or cut greens to
13 consumers.

14 (B) DISTRIBUTION CENTERS.—The term
15 “retailer” includes a distribution center owned
16 or controlled by a person described in subpara-
17 graph (A) only if—

18 (i) the predominant retail business ac-
19 tivity of the retailer is not floral sales; and

20 (ii) the majority of the cut flowers
21 and cut greens sales or transfers from the
22 center are to entities owned or controlled
23 by the person.

24 (10) SECRETARY.—The term “Secretary”
25 means the Secretary of Agriculture.

1 (11) STATE.—The term “State” means each of
2 the several States of the United States, the District
3 of Columbia, the Commonwealth of Puerto Rico, the
4 Commonwealth of the Northern Mariana Islands,
5 the United States Virgin Islands, Guam, American
6 Samoa, the Republic of the Marshall Islands, the
7 Federated States of Micronesia, and the Republic of
8 Palau (until such time as the Compact of Free Asso-
9 ciation is ratified).

10 (12) UNITED STATES.—The term “United
11 States” means the States collectively.

12 **SEC. 4. ISSUANCE OF ORDERS.**

13 (a) IN GENERAL.—

14 (1) ISSUANCE.—To effectuate the purpose of
15 this Act, the Secretary, subject to the procedures
16 provided in subsection (b), shall issue orders under
17 this Act applicable to qualified handlers of cut flow-
18 ers and cut greens.

19 (2) SCOPE.—Any order issued under this Act
20 shall be national in scope.

21 (3) ONE ORDER.—Not more than one order
22 shall be in effect under this Act at any time.

23 (b) PROCEDURES.—

24 (1) PROPOSAL FOR AN ORDER.—

1 (A) SECRETARY.—The Secretary may pro-
2 pose the issuance of an order under this Act.

3 (B) INDUSTRY GROUP.—An industry group
4 of long standing that represents a substantial
5 number of the industry members who are to be
6 assessed under the order (as determined by the
7 Secretary) may request the issuance of, and
8 submit a proposal for, an order under this Act.

9 (2) PUBLICATION OF PROPOSAL.—The Sec-
10 retary shall publish a proposed order and give notice
11 and opportunity for public comment on the proposed
12 order not later than 60 days after the earlier of—

13 (A) the date on which the Secretary pro-
14 poses an order, as provided in paragraph
15 (1)(A); or

16 (B) the date of the receipt by the Sec-
17 retary of a proposal for an order from an indus-
18 try group, as provided in paragraph (1)(B).

19 (3) ISSUANCE OF ORDER.—

20 (A) IN GENERAL.—After notice and oppor-
21 tunity for public comment are provided in ac-
22 cordance with paragraph (2), the Secretary
23 shall issue the order, taking into consideration
24 the comments received and including in the
25 order provisions necessary to ensure that the

1 order is in conformity with the requirements of
2 this Act.

3 (B) EFFECTIVE DATE.—The order shall be
4 issued and become effective not later than 150
5 days following publication of the proposed
6 order.

7 (c) AMENDMENTS.—The Secretary, from time to
8 time, may amend an order issued under this Act. The pro-
9 visions of this Act applicable to an order shall be applica-
10 ble to amendments to the order.

11 **SEC. 5. REQUIRED TERMS IN ORDERS.**

12 (a) IN GENERAL.—An order issued under this Act
13 shall contain the terms and provisions prescribed in this
14 section.

15 (b) PROMOFLOP COUNCIL.—

16 (1) ESTABLISHMENT AND MEMBERSHIP.—

17 (A) ESTABLISHMENT.—The order shall
18 provide for the establishment of a Fresh Cut
19 Flowers and Fresh Cut Greens Promotion
20 Council, consisting of 21 members, to admin-
21 ister the order.

22 (B) MEMBERSHIP.—The order shall pro-
23 vide that members of the PromoFlor Council
24 shall be appointed by the Secretary from nomi-
25 nations submitted by qualified wholesale han-

1 dlers, producers and importers that are quali-
2 fied handlers, and retailers, as provided in
3 paragraphs (2) and (3).

4 (2) DISTRIBUTION OF APPOINTMENTS.—

5 (A) IN GENERAL.—The order shall provide
6 that the membership of the PromoFlor Council
7 shall be made up of—

8 (i) 14 members representing qualified
9 wholesale handlers of domestic or imported
10 cut flowers and cut greens;

11 (ii) 3 members representing producers
12 that are qualified handlers of cut flowers
13 and cut greens;

14 (iii) 3 members representing import-
15 ers that are qualified handlers of cut flow-
16 ers and cut greens; and

17 (iv) 1 member representing cut flow-
18 ers and cut greens retailers.

19 (B) DEFINITIONS.—As used in this sub-
20 section:

21 (i) QUALIFIED WHOLESALE HAN-
22 DLERS.—

23 (I) IN GENERAL.—The term
24 “qualified wholesale handler” means a
25 person in business as a floral whole-

1 sale jobber or floral supplier that is
2 subject to assessments as a qualified
3 handler under the order.

4 (II) DEFINITIONS.—As used in
5 this clause:

6 (aa) FLORAL WHOLESALE
7 JOBBER.—The term “floral
8 wholesale jobber” means a person
9 that conducts a commission or
10 other wholesale business in buy-
11 ing and selling cut flowers or cut
12 greens.

13 (bb) FLORAL SUPPLIER.—
14 The term “floral supplier” means
15 a person engaged in acquiring
16 cut flowers or cut greens to be
17 manufactured into floral articles
18 or otherwise processed for resale.

19 (ii) PRODUCER THAT IS A QUALIFIED
20 HANDLER.—The term “producer that is a
21 qualified handler” means an entity that—

22 (I) is engaged—

23 (aa) in the domestic produc-
24 tion, for sale in commerce, of cut
25 flowers or cut greens and that

1 owns or shares in the ownership
2 and risk of loss of the cut flowers
3 or cut greens; or

4 (bb) as a first processor of
5 noncultivated cut greens, in re-
6 ceiving the cut greens from the
7 persons that gather the cut
8 greens for handling; and

9 (II) that is subject to assess-
10 ments as a qualified handler under
11 the order.

12 (iii) IMPORTER THAT IS A QUALIFIED
13 HANDLER.—The term “importer that is a
14 qualified handler” means an entity—

15 (I) whose principal activity is the
16 importation of cut flowers or cut
17 greens into the United States (either
18 directly or as an agent, broker, or
19 consignee of any person or nation that
20 produces or handles cut flowers or cut
21 greens outside the United States for
22 sale in the United States); and

23 (II) that is subject to assess-
24 ments as a qualified handler under
25 the order.

1 (C) DISTRIBUTION OF QUALIFIED WHOLE-
2 SALE HANDLER APPOINTMENTS.—The order
3 shall provide that the qualified wholesale han-
4 dler appointments made by the Secretary to the
5 PromoFlor Council shall take into account the
6 geographical distribution of cut flowers and cut
7 greens markets in the United States.

8 (3) NOMINATION PROCESS.—The order shall
9 provide that—

10 (A) 2 nominees be submitted for each ap-
11 pointment to the PromoFlor Council;

12 (B) nominations for each appointment of a
13 qualified wholesale handler, producer that is a
14 qualified handler, or importer that is a qualified
15 handler to the PromoFlor Council shall be
16 made by qualified wholesale handlers, producers
17 that are qualified handlers, or importers that
18 are qualified handlers, respectively, through an
19 election process under regulations prescribed by
20 the Secretary;

21 (C) nominations for the retailer appoint-
22 ment shall be made by the American Floral
23 Marketing Council or a successor entity; and

24 (D) in any case in which qualified whole-
25 sale handlers, producers that are qualified han-

1 dlers, importers that are qualified handlers, or
2 retailers fail to nominate individuals for an ap-
3 pointment to the PromoFlor Council, the Sec-
4 retary may appoint a person to fill the vacancy
5 on a basis provided in the order or other regu-
6 lations of the Secretary.

7 (4) ALTERNATES.—The order shall provide for
8 the selection of alternate members of the PromoFlor
9 Council by the Secretary under procedures specified
10 in the order.

11 (5) TERMS; COMPENSATION.—The order shall
12 provide that—

13 (A) each term of appointment to the
14 PromoFlor Council shall be for 3 years, except
15 that, of the initial appointments, $\frac{1}{3}$ of the
16 terms shall be for 2-year terms, $\frac{1}{3}$ of the terms
17 shall be for 3-year terms, and $\frac{1}{3}$ of the terms
18 shall be for 4-year terms;

19 (B) no member of the PromoFlor Council
20 may serve more than 2 consecutive terms of 3
21 years, except that any member serving an initial
22 term of 4 years may serve an additional term
23 of 3 years; and

24 (C) PromoFlor Council members shall
25 serve without compensation, but shall be reim-

1 bursed for the expenses of the members in-
2 curred in performing duties as members of the
3 PromoFlor Council.

4 (6) EXECUTIVE COMMITTEE.—

5 (A) ESTABLISHMENT.—

6 (i) IN GENERAL.—The order shall au-
7 thorize the PromoFlor Council to appoint
8 from among the members of the Council
9 an executive committee composed of not
10 more than 9 members.

11 (ii) INITIAL MEMBERSHIP.—The
12 membership of the executive committee ini-
13 tially shall be composed of—

14 (I) 4 members representing
15 qualified wholesale handlers;

16 (II) 2 members representing pro-
17 ducers that are qualified handlers;

18 (III) 2 members representing im-
19 porters that are qualified handlers;
20 and

21 (IV) 1 member representing re-
22 tailers.

23 (iii) SUBSEQUENT MEMBERSHIP.—
24 After the initial appointments, appoint-
25 ments to the executive committee shall be

1 made so as to ensure that the committee
2 reflects, to the maximum extent prac-
3 ticable, the membership composition of the
4 PromoFlor Council as a whole.

5 (iv) TERMS.—An initial appointment
6 to the executive committee shall be for a
7 term of 2 years. After the initial appoint-
8 ments, an appointment to the executive
9 committee shall be for a term of 1 year.

10 (B) AUTHORITY.—The PromoFlor Council
11 may delegate to the executive committee the au-
12 thority of the Council under the order to hire
13 and manage staff and conduct the routine busi-
14 ness of the PromoFlor Council consistent with
15 the policies determined by the PromoFlor Coun-
16 cil.

17 (c) GENERAL RESPONSIBILITIES OF THE
18 PROMOFLOL COUNCIL.—The order shall define the gen-
19 eral responsibilities of the PromoFlor Council, which shall
20 include the responsibility to—

21 (1) administer the order in accordance with the
22 terms and provisions of the order;

23 (2) make rules and regulations to effectuate the
24 terms and provisions of the order;

1 (3) appoint members of the PromoFlor Council
2 to serve on an executive committee;

3 (4) employ such persons as the PromoFlor
4 Council determines are necessary, and set the com-
5 pensation and define the duties of the persons;

6 (5)(A) develop budgets for the implementation
7 of the order and submit the budgets to the Secretary
8 for approval under subsection (d); and

9 (B) propose and develop (or receive and evalu-
10 ate), approve, and submit to the Secretary for ap-
11 proval under subsection (d) plans and projects for
12 cut flowers or cut greens promotion, consumer infor-
13 mation, or related research;

14 (6)(A) implement plans and projects for cut
15 flowers or cut greens promotion, consumer informa-
16 tion, or related research, as provided in subsection
17 (d); or

18 (B) contract or enter into agreements with ap-
19 propriate persons to implement the plans and
20 projects, as provided in subsection (e), and pay the
21 costs of the implementation, or contracts and agree-
22 ments, with funds received under the order;

23 (7) evaluate on-going and completed plans and
24 projects for cut flowers or cut greens promotion,
25 consumer information, or related research;

1 (8) receive, investigate, and report to the Sec-
2 retary complaints of violations of the order;

3 (9) recommend to the Secretary amendments to
4 the order;

5 (10) invest, pending disbursement under a plan
6 or project, funds collected through assessments au-
7 thorized under this Act only in—

8 (A) obligations of the United States or any
9 agency of the United States;

10 (B) general obligations of any State or any
11 political subdivision of a State;

12 (C) any interest-bearing account or certifi-
13 cate of deposit of a bank that is a member of
14 the Federal Reserve System; or

15 (D) obligations fully guaranteed as to prin-
16 cipal and interest by the United States,

17 except that income from any such invested funds
18 may only be used for a purpose for which the in-
19 vested funds may be used; and

20 (11) furnish the Secretary with such informa-
21 tion as the Secretary may require.

22 (d) BUDGETS; PLANS AND PROJECTS.—

23 (1) SUBMISSION OF BUDGETS.—The order shall
24 require the PromoFlor Council to submit to the Sec-
25 retary for approval budgets on a fiscal year basis of

1 the anticipated expenses and disbursements of the
2 PromoFlor Council in the implementation of the
3 order, including projected costs of cut flowers and
4 cut greens promotion, consumer information, and re-
5 lated research plans and projects.

6 (2) PLANS OR PROJECTS.—

7 (A) PROMOTION AND CONSUMER INFORMA-
8 TION.—The order shall provide—

9 (i) for the establishment, implementa-
10 tion, administration, and evaluation of ap-
11 propriate plans and projects for advertis-
12 ing, sales promotion, other promotion, and
13 consumer information with respect to cut
14 flowers and cut greens, and for the dis-
15bursement of necessary funds for the pur-
16poses described in this clause;

17 (ii) that any plan or project shall be
18 directed toward increasing the general de-
19mand for cut flowers or cut greens and
20 may not make reference to a private brand
21 or trade name, point of origin, or source of
22 supply, except that this clause shall not
23 preclude the PromoFlor Council from of-
24fering the plans and projects of the
25 PromoFlor Council for use by commercial

1 parties, under terms and conditions pre-
2 scribed by the PromoFlor Council and ap-
3 proved by the Secretary; and

4 (iii) that no plan or project may make
5 use of unfair or deceptive acts or practices
6 with respect to quality or value.

7 (B) RESEARCH.—The order shall provide
8 for—

9 (i) the establishment, implementation,
10 administration, and evaluation of plans
11 and projects for market development re-
12 search, research with respect to the sale,
13 distribution, marketing, or use of cut flow-
14 ers or cut greens, and other research with
15 respect to cut flowers or cut greens mar-
16 keting, promotion, or consumer informa-
17 tion;

18 (ii) the dissemination of the informa-
19 tion gained by the activities; and

20 (iii) the disbursement of necessary
21 funds to carry out this subparagraph.

22 (C) SUBMISSION TO SECRETARY.—The
23 order shall provide that the PromoFlor Council
24 shall submit to the Secretary for approval a
25 proposed plan or project for cut flowers or cut

1 greens promotion, consumer information, or re-
2 lated research, as described in subparagraphs
3 (A) and (B).

4 (3) APPROVAL BY SECRETARY.—No budget, or
5 plan or project for cut flowers or cut greens pro-
6 motion, consumer information, or related research,
7 shall be implemented prior to the approval of the
8 budget, plan, or project by the Secretary.

9 (e) CONTRACTS AND AGREEMENTS.—

10 (1) PROMOTION, CONSUMER INFORMATION, AND
11 RELATED RESEARCH PLANS AND PROJECTS.—

12 (A) IN GENERAL.—To ensure efficient use
13 of funds, the order shall provide that the
14 PromoFlor Council, with the approval of the
15 Secretary, may enter into a contract or agree-
16 ment for the implementation of a plan or
17 project for promotion, consumer information, or
18 related research with respect to cut flowers or
19 cut greens, and for the payment of the cost of
20 the implementation of the plan or project with
21 funds received by the PromoFlor Council under
22 the order.

23 (B) REQUIREMENTS.—The order shall pro-
24 vide that any contract or agreement entered
25 into under this paragraph shall provide that—

1 (i) the contracting or agreeing party
2 shall develop and submit to the PromoFlor
3 Council a plan or project, together with a
4 budget that shall show estimated costs to
5 be incurred for the plan or project;

6 (ii) the plan or project shall become
7 effective on the approval of the Secretary;
8 and

9 (iii) the contracting or agreeing party
10 shall keep accurate records of all of the
11 transactions of the party, account for
12 funds received and expended, make peri-
13 odic reports to the PromoFlor Council of
14 activities conducted, and make such other
15 reports as the PromoFlor Council or the
16 Secretary may require.

17 (2) OTHER CONTRACTS AND AGREEMENTS.—

18 The order shall provide that the PromoFlor Council
19 may enter into a contract or agreement for adminis-
20 trative services. Any contract or agreement entered
21 into under this paragraph shall include provisions
22 comparable to those described in paragraph (1)(B).

23 (f) BOOKS AND RECORDS OF THE PROMOFLOR
24 COUNCIL.—

1 (1) IN GENERAL.—The order shall require the
2 PromoFlor Council to—

3 (A) maintain such books and records
4 (which shall be available to the Secretary for in-
5 spection and audit) as the Secretary may pre-
6 scribe;

7 (B) prepare and submit to the Secretary,
8 from time to time, such reports as the Sec-
9 retary may prescribe; and

10 (C) account for the receipt and disburse-
11 ment of all funds entrusted to the PromoFlor
12 Council.

13 (2) AUDITS.—The PromoFlor Council shall
14 cause the books and records of the PromoFlor Coun-
15 cil to be audited by an independent auditor at the
16 end of each fiscal year. A report of each audit shall
17 be submitted to the Secretary.

18 (g) CONTROL OF ADMINISTRATIVE COSTS.—The
19 order shall provide that the PromoFlor Council shall, as
20 soon as practicable after the order becomes effective and
21 after consultation with the Secretary and other appro-
22 priate persons, implement a system of cost controls based
23 on normally accepted business practices that will ensure
24 that the annual budgets of the PromoFlor Council only
25 include amounts for administrative expenses that cover the

1 minimum administrative activities and personnel needed
2 to properly administer and enforce the order and conduct,
3 supervise, and evaluate plans and projects under the
4 order.

5 (h) ASSESSMENTS.—

6 (1) AUTHORITY.—

7 (A) IN GENERAL.—The order shall provide
8 that each qualified handler shall pay to the
9 PromoFlor Council, in the manner prescribed
10 by the order, an assessment on each sale of cut
11 flowers or cut greens to a retailer or an exempt
12 handler (including each transaction described in
13 subparagraph (C)(ii)), except to the extent the
14 sale is excluded from assessments under section
15 6(a).

16 (B) PUBLISHED LISTS.—To facilitate the
17 payment of assessments under this paragraph,
18 the PromoFlor Council shall publish lists of
19 qualified handlers required to pay assessments
20 under the order and exempt handlers.

21 (C) MAKING DETERMINATIONS.—

22 (i) QUALIFIED HANDLER STATUS.—

23 The order shall contain provisions regard-
24 ing the determination of the status of a
25 person as a qualified handler or exempt

1 handler that include the rules and require-
2 ments specified in sections 3(4) and 6(b).

3 (ii) COVERED TRANSACTIONS.—

4 (I) IN GENERAL.—The order
5 shall provide that each non-sale trans-
6 fer of cut flowers or cut greens to a
7 retailer from a qualified handler that
8 is a distribution center (as described
9 in section 3(4)(A)(ii)(III)), and each
10 direct sale of cut flowers or cut greens
11 to a consumer by a qualified handler
12 that is an importer or producer (as
13 described in section 3(4)(A)(v)), shall
14 be treated as a sale of cut flowers or
15 cut greens to a retailer subject to as-
16 sessments under this subsection.

17 (II) AMOUNT.—The amount of
18 the assessment under this clause shall
19 equal—

20 (aa) the price paid by the
21 distribution center or importer,
22 respectively, to acquire the cut
23 flowers or cut greens; and

24 (bb) an amount determined
25 by multiplying the acquisition

1 price by a uniform percentage es-
2 tablished by the PromoFlor
3 Council to represent the mark-up
4 of a wholesale handler on a sale
5 to a retailer (or in the case of a
6 direct sale to a consumer by a
7 producer, an amount determined
8 by applying to the price paid by
9 the consumer a uniform percent-
10 age established by the PromoFlor
11 Council to represent the cost of
12 producing the article and the
13 mark-up of a wholesale handler
14 on a sale to a retailer).

15 (2) ASSESSMENT RATES.—The order shall con-
16 tain the following terms:

17 (A) INITIAL RATE.—During the first 3
18 years the order is in effect, the rate of assess-
19 ment on each sale or transfer of cut flowers or
20 cut greens shall be $\frac{1}{2}$ of 1 percent of the gross
21 sales price of a product sold or (in the case of
22 transactions described in paragraph (1)(C)(ii))
23 of the amount of each transaction calculated as
24 provided in paragraph (1)(C)(ii).

25 (B) CHANGES IN THE RATE.—

1 (i) IN GENERAL.—After the first 3
2 years the order is in effect, the uniform as-
3 sessment rate may be increased or de-
4 creased annually by not more than .25 per-
5 cent of the gross sales price of a product
6 sold or (in the case of transactions de-
7 scribed in paragraph (1)(C)(ii)) of the
8 amount of each transaction calculated as
9 provided in paragraph (1)(C)(ii), except
10 that the assessment rate may in no case
11 exceed 1 percent of the gross sales price or
12 transaction amount.

13 (ii) REQUIREMENTS.—Any change in
14 the rate of assessment under this subpara-
15 graph—

16 (I) may be made only if adopted
17 by the PromoFlor Council by a $\frac{2}{3}$
18 majority vote and approved by the
19 Secretary as necessary to achieve the
20 objectives of this Act;

21 (II) shall be announced by the
22 PromoFlor Council at least 30 days
23 prior to going into effect; and

24 (III) shall not be subject to a
25 vote in a referendum under section 7.

1 (3) TIMING OF SUBMITTING ASSESSMENTS.—

2 The order shall provide that each person required to
3 pay assessments under this subsection shall remit, to
4 the PromoFlor Council, the assessment due from
5 each sale by the person of cut flowers or cut greens
6 that is subject to an assessment within such time pe-
7 riod after the sale (not to exceed 60 days from the
8 end of the month in which the sale took place) as
9 is specified in the order.

10 (4) REFUNDS FROM ESCROW ACCOUNT.—

11 (A) ESTABLISHMENT OF ESCROW AC-
12 COUNT.—The order shall provide that the
13 PromoFlor Council shall—

14 (i) establish an escrow account to be
15 used for assessment refunds, as needed;
16 and

17 (ii) place into the account an amount
18 equal to 10 percent of the total amount of
19 assessments collected during the period be-
20 ginning on the date the order goes into ef-
21 fect, as provided in section 4(b)(3), and
22 ending on the date the initial referendum
23 on the order provided for in section 7(a) is
24 completed.

25 (B) RIGHT TO RECEIVE REFUND.—

1 (i) IN GENERAL.—The order shall
2 provide that, subject to subparagraph (C)
3 and the conditions specified in clause (ii),
4 any qualified handler shall have the right
5 to demand and receive from the PromoFlor
6 Council out of the escrow account a one-
7 time refund of any assessments paid by or
8 on behalf of the qualified handler during
9 the time period specified in subparagraph
10 (A)(ii), if—

11 (I) the qualified handler is re-
12 quired to pay the assessments;

13 (II) the qualified handler does
14 not support the program established
15 under this Act;

16 (III) the qualified handler de-
17 mands the refund prior to the conduct
18 of the referendum on the order under
19 section 7(a); and

20 (IV) the order is not approved by
21 qualified handlers in the referendum.

22 (ii) CONDITIONS.—The right of a
23 qualified handler to receive a refund under
24 clause (i) shall be subject to the following
25 conditions:

1 (I) The demand shall be made in
2 accordance with regulations, on a
3 form, and within a time period pre-
4 scribed by the PromoFlor Council.

5 (II) The refund shall be made
6 only on submission of proof satisfac-
7 tory to the Board that the qualified
8 handler paid the assessment for which
9 refund is demanded.

10 (III) If the amount in the escrow
11 account required under subparagraph
12 (A) is not sufficient to refund the
13 total amount of assessments de-
14 manded by all qualified handlers de-
15 termined eligible for refunds and the
16 order is not approved in the referen-
17 dum on the order under section 7(a),
18 the PromoFlor Council shall prorate
19 the amount of all such refunds among
20 all eligible qualified handlers that de-
21 mand the refund.

22 (C) PROGRAM APPROVED.—The order shall
23 provide that, if the order is approved in the ref-
24 erendum under section 7(a), there shall be no
25 refunds made and all funds in the escrow ac-

1 count shall be returned to the PromoFlor Coun-
2 cil for use by the PromoFlor Council in accord-
3 ance with the other provisions of the order.

4 (5) USE OF ASSESSMENT FUNDS.—The order
5 shall provide that assessment funds (less any re-
6 funds paid out under the terms of the order required
7 under paragraph (4)) shall be used for payment of
8 costs incurred in implementing and administering
9 the order, with provision for a reasonable reserve,
10 and to cover those administrative costs incurred by
11 the Secretary in implementing and administering
12 this Act, except for the salaries of Federal Govern-
13 ment employees incurred in conducting referenda.

14 (i) PROHIBITION.—The order shall prohibit the use
15 of any funds received by the PromoFlor Council in any
16 manner for the purpose of influencing legislation or gov-
17 ernment action or policy, except that the funds may be
18 used by the PromoFlor Council for the development and
19 recommendation to the Secretary of amendments to the
20 order.

21 (j) BOOKS AND RECORDS; REPORTS.—

22 (1) IN GENERAL.—The order shall provide that
23 each qualified handler shall maintain, and make
24 available for inspection, such books and records as
25 may be required by the order and file reports at the

1 time, in the manner, and having the content pre-
2 scribed by the order, to the end that information is
3 made available to the Secretary and the PromoFlor
4 Council as is appropriate for the administration or
5 enforcement of this Act, the order, or any regulation
6 issued under this Act.

7 (2) CONFIDENTIALITY REQUIRED.—

8 (A) IN GENERAL.—Information obtained
9 from books, records, or reports under the au-
10 thority provided in paragraph (1), or from re-
11 ports required under section 6(b)(3), shall be
12 kept confidential by all officers and employees
13 of the Department of Agriculture and by the
14 staff and agents of the PromoFlor Council.

15 (B) SUITS AND HEARINGS.—Information
16 described in subparagraph (A) may be disclosed
17 to the public only—

18 (i) in a suit or administrative hearing
19 brought at the request of the Secretary, or
20 to which the Secretary or any officer of the
21 United States is a party, involving the
22 order; and

23 (ii) to the extent the Secretary consid-
24 ers the information relevant to the suit or
25 hearing.

1 (C) GENERAL STATEMENTS AND PUBLICA-
2 TION.—Nothing in this paragraph may be con-
3 strued to prohibit—

4 (i) the issuance of general statements,
5 based on the reports, of the number of per-
6 sons subject to the order or statistical data
7 collected from the reports, which state-
8 ments do not identify the information fur-
9 nished by any person; or

10 (ii) the publication, by direction of the
11 Secretary, of the name of any person vio-
12 lating the order, together with a statement
13 of the particular provisions of the order
14 violated by the person.

15 (3) LISTS OF IMPORTERS.—

16 (A) REVIEW.—The order shall provide that
17 the staff of the PromoFlor Council periodically
18 shall review lists of importers of cut flowers and
19 cut greens to determine whether persons on the
20 lists are subject to the order.

21 (B) CUSTOMS SERVICE.—On the request of
22 the PromoFlor Council, the United States Cus-
23 toms Service shall provide to the PromoFlor
24 Council lists of importers of cut flowers and cut
25 greens.

1 (k) CONSULTATIONS WITH INDUSTRY EXPERTS.—

2 (1) IN GENERAL.—The order shall provide that
3 the PromoFlor Council, from time to time, may seek
4 advice from and consult with experts from the pro-
5 duction, import, wholesale, and retail segments of
6 the cut flowers and cut greens industry to assist in
7 the development of promotion, consumer informa-
8 tion, and related research plans and projects.

9 (2) SPECIAL COMMITTEES.—

10 (A) IN GENERAL.—For the purposes de-
11 scribed in paragraph (1), the order shall au-
12 thorize the appointment of special committees
13 composed of persons other than PromoFlor
14 Council members.

15 (B) CONSULTATION.—A committee ap-
16 pointed under subparagraph (A)—

17 (i) may not provide advice or rec-
18 ommendations to an agency or officer of
19 the Federal Government; and

20 (ii) shall consult directly with the
21 PromoFlor Council.

22 (l) OTHER TERMS OF THE ORDER.—The order shall
23 contain such other terms and provisions, consistent with
24 this Act, as are necessary to carry out this Act (including
25 provision for the assessment of a charge for each late pay-

1 ment of assessments under subsection (h) and for carrying
2 out section 6).

3 **SEC. 6. EXCLUSION; DETERMINATIONS.**

4 (a) EXCLUSION.—An order issued under this Act
5 shall exclude from assessments under the order any sale
6 of cut flowers or cut greens for export from the United
7 States.

8 (b) MAKING DETERMINATIONS.—

9 (1) IN GENERAL.—For purposes of applying the
10 \$750,000 annual sales limitation to a person to de-
11 termine the status of the person as a qualified han-
12 dler or an exempt handler under section 3(4), or to
13 a specific facility in order to determine the status of
14 the facility as an eligible separate facility under sec-
15 tion 7(b)(2), an order issued under this Act shall
16 provide that—

17 (A) a determination of the annual sales
18 volume of a person or facility shall be based on
19 the sales of cut flowers and cut greens by the
20 person or facility during the most recently-com-
21 pleted calendar year, except as provided in sub-
22 paragraph (B); and

23 (B) in the case of a new business or other
24 operation for which complete data on sales dur-
25 ing all or part of the most recently-completed

1 calendar year are not available to the
2 PromoFlor Council, the determination may be
3 made using an alternative time period or other
4 alternative procedures specified in the order.

5 (2) RULE OF ATTRIBUTION.—

6 (A) IN GENERAL.—For purposes of deter-
7 mining the annual sales volume of a person or
8 a separate facility of a person, sales attrib-
9 utable to a person shall include—

10 (i) in the case of an individual, sales
11 attributable to the spouse, children, grand-
12 children, parents, and grandparents of the
13 individual;

14 (ii) in the case of a partnership or
15 member of a partnership, sales attributable
16 to the partnership and other partners of
17 the partnership;

18 (iii) in the case of an individual and
19 partnership, sales attributable to any cor-
20 poration or other entity in which the indi-
21 vidual or partnership owns more than 50
22 percent of the stock or (if the entity is not
23 a corporation) that the individual or part-
24 nership controls; and

1 (iv) in the case of a corporation, sales
 2 attributable to any corporate subsidiary or
 3 other corporation or entity in which the
 4 corporation owns more than 50 percent of
 5 the stock or (if the entity is not a corpora-
 6 tion) that the corporation controls.

7 (B) STOCK AND OWNERSHIP INTEREST.—

8 For purposes of this paragraph, stock or an
 9 ownership interest in an entity that is owned by
 10 the spouse, children, grandchildren, parents,
 11 grandparents, or partners of an individual, or
 12 by a partnership in which a person is a partner,
 13 or by a corporation more than 50 percent of the
 14 stock of which is owned by a person, shall be
 15 treated as owned by the individual or person.

16 (3) REPORTS.—For purposes of this subsection,
 17 the order may require a person that sells cut flowers
 18 or cut greens to retailers to submit reports to the
 19 PromoFlor Council on annual sales by the person.
 20 The reports shall be subject to the confidentiality re-
 21 quirements of section 5(j)(2).

22 **SEC. 7. REFERENDA.**

23 (a) REQUIREMENT FOR INITIAL REFERENDUM.—

24 (1) CONDUCT.—Not later than 3 years after
 25 the issuance of an order under section 4(b)(3), the

1 Secretary shall conduct a referendum among quali-
2 fied handlers required to pay assessments under the
3 order, as provided in section 5(h)(1), subject to the
4 voting requirements of subsection (b), to ascertain
5 whether or not the order then in effect shall be con-
6 tinued.

7 (2) APPROVAL OF ORDER NEEDED.—The order
8 shall be continued only if the Secretary determines
9 that the order has been approved by a simple major-
10 ity of all votes cast in the referendum. If the order
11 is not approved, the Secretary shall terminate the
12 order as provided in subsection (d).

13 (b) VOTES PERMITTED.—

14 (1) IN GENERAL.—Each qualified handler eligi-
15 ble to vote in a referendum under this section shall
16 be entitled to cast 1 vote for each separate facility
17 of the person that is an eligible separate facility, as
18 defined in paragraph (2).

19 (2) ELIGIBLE SEPARATE FACILITY.—For pur-
20 poses of paragraph (1):

21 (A) SEPARATE FACILITY.—A handling or
22 marketing facility of a qualified handler shall be
23 considered a separate facility if the facility is
24 physically located away from other facilities of
25 the qualified handler or the business function of

1 the facility is substantially different than the
2 functions of other facilities owned or operated
3 by the qualified handler.

4 (B) ELIGIBILITY.—A separate facility of a
5 qualified handler shall be considered an eligible
6 separate facility if the annual sales of cut flow-
7 ers and cut greens to retailers and exempt han-
8 dlers from the facility are \$750,000 or more.

9 (C) ANNUAL SALES DETERMINED.—For
10 purposes of determining the amount of annual
11 sales of cut flowers and cut greens under sub-
12 paragraph (B), the requirements of subpara-
13 graphs (A) and (C) of section 3(4) shall apply.

14 (c) SUSPENSION OR TERMINATION REFERENDA.—
15 Effective beginning on the date that is 3 years after an
16 order issued under this Act is approved in a referendum
17 conducted under subsection (a), the Secretary—

18 (1) at the discretion of the Secretary, may con-
19 duct at any time a referendum of qualified handlers
20 required to pay assessments under the order, as pro-
21 vided in section 5(h)(1), subject to the voting re-
22 quirements of subsection (b), to ascertain whether or
23 not qualified handlers favor suspension or termi-
24 nation of the order; and

1 (2) whenever requested by the PromoFlor
2 Council or by a representative group comprising 30
3 percent or more of all qualified handlers required to
4 pay assessments under the order, as provided in sec-
5 tion 5(h)(1), shall conduct a referendum of all quali-
6 fied handlers required to pay assessments under the
7 order, as provided in section 5(h)(1), subject to the
8 voting requirements of subsection (b), to ascertain
9 whether or not qualified handlers favor suspension
10 or termination of the order.

11 (d) SUSPENSION OR TERMINATION.—If, as a result
12 of the referendum conducted under subsection (a)(2), the
13 Secretary determines that the order has not been approved
14 by a simple majority of all votes cast in the referendum,
15 or as a result of a referendum conducted under subsection
16 (c), the Secretary determines that suspension or termi-
17 nation of the order is favored by a simple majority of all
18 votes cast in the referendum, the Secretary shall—

19 (1) within 180 days after the referendum, sus-
20 pend or terminate, as appropriate, collection of as-
21 sessments under the order; and

22 (2) suspend or terminate, as appropriate, activi-
23 ties under the order in an orderly manner as soon
24 as practicable.

1 (e) MANNER OF CONDUCTING REFERENDA.—
2 Referenda under this section shall be conducted in such
3 manner as is determined appropriate by the Secretary.

4 **SEC. 8. PETITION AND REVIEW.**

5 (a) PETITION AND HEARING.—

6 (1) PETITION.—A person subject to an order
7 issued under this Act may file with the Secretary a
8 petition—

9 (A) stating that the order, any provision of
10 the order, or any obligation imposed in connec-
11 tion with the order is not in accordance with
12 law; and

13 (B) requesting a modification of the order
14 or an exemption from the order.

15 (2) HEARING.—The petitioner shall be given
16 the opportunity for a hearing on a petition filed
17 under paragraph (1), in accordance with regulations
18 issued by the Secretary. Any such hearing shall be
19 conducted in accordance with section 10(b)(2) and
20 shall be held within the United States judicial dis-
21 trict in which the residence or principal place of
22 business of the person is located.

23 (3) RULING.—After a hearing under paragraph
24 (2), the Secretary shall make a ruling on the peti-

1 tion, which shall be final if made in accordance with
2 law.

3 (b) REVIEW.—

4 (1) COMMENCEMENT OF ACTION.—The district
5 courts of the United States in any district in which
6 a person that is a petitioner under subsection (a) re-
7 sides or carries on business shall have jurisdiction to
8 review the ruling of the Secretary on the petition of
9 the person, if a complaint requesting the review is
10 filed within 20 days after the date of the entry of
11 the ruling by the Secretary.

12 (2) PROCESS.—Service of process in proceed-
13 ings under this subsection shall be conducted in ac-
14 cordance with the Federal Rules of Civil Procedure.

15 (3) REMAND.—If the court in a proceeding
16 under this subsection determines that the ruling of
17 the Secretary on the petition of the person is not in
18 accordance with law, the court shall remand the
19 matter to the Secretary with directions—

20 (A) to make such ruling as the court shall
21 determine to be in accordance with law; or

22 (B) to take such further action as, in the
23 opinion of the court, the law requires.

24 (c) ENFORCEMENT UNDER SECTION 9.—The pend-
25 ency of proceedings instituted under this section shall not

1 impede, hinder, or delay the Attorney General or the Sec-
2 retary from obtaining relief under section 9.

3 **SEC. 9. ENFORCEMENT.**

4 (a) JURISDICTION.—A district court of the United
5 States shall have jurisdiction to enforce, and to prevent
6 and restrain any person from violating, this Act or an
7 order or regulation made or issued by the Secretary under
8 this Act.

9 (b) REFERRAL TO ATTORNEY GENERAL.—A civil ac-
10 tion brought under subsection (a) shall be referred to the
11 Attorney General for appropriate action, except that the
12 Secretary is not required to refer to the Attorney General
13 a violation of this Act, or a violation of an order or regula-
14 tion issued under this Act, if the Secretary believes that
15 the administration and enforcement of this Act would be
16 adequately served by administrative action under sub-
17 section (c) or suitable written notice or warning to the per-
18 son who committed or is committing the violation.

19 (c) CIVIL PENALTIES AND ORDERS.—

20 (1) CIVIL PENALTIES.—

21 (A) IN GENERAL.—A person that violates
22 a provision of this Act, or an order or regula-
23 tion issued by the Secretary under this Act, or
24 who fails or refuses to pay, collect, or remit any
25 assessment or fee required of the person under

1 an order or regulation issued under this Act,
2 may be assessed by the Secretary—

3 (i) a civil penalty of not less than
4 \$500 nor more than \$5,000 for each viola-
5 tion; and

6 (ii) in the case of a willful failure to
7 remit an assessment as required by an
8 order or regulation, an additional penalty
9 equal to the amount of the assessment.

10 (B) SEPARATE OFFENSES.—Each violation
11 shall be a separate offense.

12 (2) CEASE AND DESIST ORDERS.—In addition
13 to or in lieu of a civil penalty under paragraph (1),
14 the Secretary may issue an order requiring a person
15 to cease and desist from continuing a violation of
16 this Act, order, or regulation described in paragraph
17 (1)(A).

18 (3) NOTICE AND HEARING.—No penalty shall
19 be assessed or cease and desist order issued by the
20 Secretary under this subsection unless the Secretary
21 gives the person against whom the penalty is as-
22 sessed or the order is issued notice and opportunity
23 for a hearing before the Secretary with respect to
24 the violation. Any such hearing shall be conducted in
25 accordance with section 10(b)(2) and shall be held

1 within the United States judicial district in which
2 the residence or principal place of business of the
3 person against whom the penalty is assessed or the
4 order is issued is located.

5 (4) FINALITY.—The penalty assessed or cease
6 and desist order issued under this subsection shall
7 be final and conclusive unless the person against
8 whom the penalty is assessed or the order is issued
9 files an appeal with the appropriate district court of
10 the United States in accordance with subsection (d).

11 (d) REVIEW BY DISTRICT COURT.—

12 (1) COMMENCEMENT OF ACTION.—

13 (A) IN GENERAL.—Any person against
14 whom a violation is found and a civil penalty is
15 assessed or cease and desist order is issued
16 under subsection (c) may obtain review of the
17 penalty or order by—

18 (i) filing, within the 30-day period be-
19 ginning on the date the penalty is assessed
20 or order is issued, a notice of appeal in the
21 district court of the United States for the
22 district in which the person resides or has
23 a principal place of business, or in the
24 United States district court for the Dis-
25 trict of Columbia; and

1 (ii) simultaneously sending a copy of
2 the notice by certified mail to the Sec-
3 retary.

4 (B) COPY OF RECORD.—The Secretary
5 shall promptly file in the court a certified copy
6 of the record on which the Secretary found that
7 the person had committed a violation.

8 (2) STANDARD OF REVIEW.—A finding of the
9 Secretary shall be set aside under this subsection
10 only if the finding is found to be unsupported by
11 substantial evidence.

12 (e) FAILURE TO OBEY AN ORDER.—

13 (1) IN GENERAL.—A person that fails to obey
14 a cease and desist order issued under subsection (c)
15 after the order has become final and unappealable,
16 or after the appropriate United States district court
17 has entered a final judgment in favor of the Sec-
18 retary, shall be subject to a civil penalty assessed by
19 the Secretary of not more than \$5,000 for each of-
20 fense, after opportunity for a hearing and for judi-
21 cial review under the procedures specified in sub-
22 sections (c) and (d).

23 (2) SEPARATE VIOLATIONS.—Each day during
24 which the person fails to obey an order shall be con-
25 sidered as a separate violation of the order.

1 (f) FAILURE TO PAY A PENALTY.—

2 (1) IN GENERAL.—If a person fails to pay a
3 civil penalty assessed under subsection (c) or (e)
4 after the penalty has become final and unappealable,
5 or after the appropriate United States district court
6 has entered final judgment in favor of the Secretary,
7 the Secretary shall refer the matter to the Attorney
8 General for recovery of the amount assessed in any
9 United States district court in which the person re-
10 sides or has a principal place of business.

11 (2) SCOPE OF REVIEW.—In the action, the va-
12 lidity and appropriateness of the civil penalty shall
13 not be subject to review.

14 (g) ADDITIONAL REMEDIES.—The remedies provided
15 in this Act shall be in addition to, and not exclusive of,
16 other remedies that may be available.

17 **SEC. 10. INVESTIGATIONS AND POWER TO SUBPOENA.**

18 (a) INVESTIGATIONS.—The Secretary may make such
19 investigations as the Secretary considers necessary for the
20 effective administration of this Act, or to determine wheth-
21 er any person has engaged or is engaging in any act that
22 constitutes a violation of this Act or an order or regulation
23 issued under this Act.

24 (b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—

1 (1) IN GENERAL.—For the purpose of conduct-
2 ing an investigation under subsection (a), the Sec-
3 retary may administer oaths and affirmations, and
4 issue subpoenas to require the production of any
5 records that are relevant to the inquiry. The produc-
6 tion of any records may be required from any place
7 in the United States.

8 (2) ADMINISTRATIVE HEARINGS.—For the pur-
9 pose of an administrative hearing held under section
10 8(a)(2) or 9(c)(3), the presiding officer may admin-
11 ister oaths and affirmations, subpoena witnesses,
12 compel the attendance of witnesses, take evidence,
13 and require the production of any records that are
14 relevant to the inquiry. The attendance of witnesses
15 and the production of any records may be required
16 from any place in the United States.

17 (c) AID OF COURTS.—

18 (1) IN GENERAL.—In the case of contumacy by,
19 or refusal to obey a subpoena issued to, any person,
20 the Secretary may invoke the aid of any court of the
21 United States within the jurisdiction of which the in-
22 vestigation or proceeding is carried on, or where the
23 person resides or carries on business, in order to en-
24 force a subpoena issued under subsection (b).

1 (2) ORDER.—The court may issue an order re-
2 quiring the person to comply with such a subpoena.

3 (3) FAILURE TO OBEY.—Any failure to obey
4 the order of the court may be punished by the court
5 as a contempt of the order.

6 (4) PROCESS.—Process in any proceeding
7 under this subsection may be served in the United
8 States judicial district in which the person being
9 proceeded against resides or carries on business or
10 wherever the person may be found.

11 **SEC. 11. CONFIDENTIALITY.**

12 (a) PROHIBITION.—No information on how a person
13 voted in a referendum conducted under this Act shall be
14 made public.

15 (b) PENALTY.—Any person who knowingly violates
16 subsection (a) or the confidentiality terms of an order, as
17 described in section 5(j)(2), shall be subject to a fine of
18 not less than \$1,000 nor more than \$10,000 or to impris-
19 onment for not more than 1 year, or both, and, if an offi-
20 cer or employee of the Department of Agriculture or the
21 PromoFlor Council, shall be removed from office.

22 (c) ADDITIONAL PROHIBITION.—No information ob-
23 tained under this Act may be made available to any agency
24 or officer of the Federal Government for any purpose
25 other than the implementation of this Act or an investiga-

1 tory or enforcement action necessary for the implementa-
2 tion of this Act.

3 (d) WITHHOLDING INFORMATION FROM CONGRESS
4 PROHIBITED.—Nothing in this Act shall be construed to
5 authorize the withholding of information from Congress.

6 **SEC. 12. AUTHORITY FOR SECRETARY TO SUSPEND OR**
7 **TERMINATE ORDER.**

8 Whenever the Secretary finds that an order issued
9 under this Act, or any provision of the order, obstructs
10 or does not tend to effectuate the declared policy of this
11 Act, the Secretary shall terminate or suspend the oper-
12 ation of the order or provision under such terms as the
13 Secretary determines appropriate.

14 **SEC. 13. CONSTRUCTION.**

15 (a) TERMINATION OR SUSPENSION NOT AN
16 ORDER.—The termination or suspension of an order, or
17 any provision of an order, shall not be considered an order
18 within the meaning of this Act.

19 (b) PRODUCER RIGHTS.—This Act—

20 (1) may not be construed to provide for control
21 of production or otherwise limit the right of individ-
22 ual cut flowers and cut greens producers to produce
23 cut flowers and cut greens; and

24 (2) shall be construed to treat all persons pro-
25 ducing cut flowers and cut greens fairly and to im-

1 plement any order established under this Act in an
2 equitable manner.

3 (c) OTHER PROGRAMS.—Nothing in this Act may be
4 construed to preempt or supersede any other program re-
5 lating to cut flowers or cut greens promotion and
6 consumer information organized and operated under the
7 laws of the United States or a State.

8 **SEC. 14. REGULATIONS.**

9 The Secretary may issue such regulations as are nec-
10 essary to carry out this Act and the powers vested in the
11 Secretary by this Act, including regulations relating to the
12 assessment of late payment charges.

13 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

14 (a) IN GENERAL.—There are authorized to be appro-
15 priated for each fiscal year such sums as are necessary
16 to carry out this Act.

17 (b) ADMINISTRATIVE EXPENSES.—Funds appro-
18 priated under subsection (a) may not be used for payment
19 of the expenses or expenditures of the PromoFlor Council
20 in administering any provision of an order issued under
21 this Act.

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S 994 IS—3

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